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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ARB.P. 356/2026, I.A. 5181/2026

TATA CAPITAL HOUSING FINANCE LIMITED .....Petitioner

Through: Mr. Arman Roop Sharma, Ms. Shelly Khanna, Mr. Kritik Rastogi, Advs.

versus

MR RAHUL GUPTA & ORS. .....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **12.05.2026**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties under the Loan Agreements entered into between the Petitioner and the Respondents.

2. The facts of the case reveal that the Respondents approached the Petitioner for grant of loan facility by mortgaging a Property bearing Residential House No.594-KA/1283 built up on Plot admeasuring 1350 Sq. Ft. i.e., 125.464 Sq. Mtrs., comprised in Khasra No.411, situated at Village/Mohalla- Ibrahimpur, Ward Ibrahimpur, Pargana/Tehsil & District Lucknow- 226002, Uttar Pradesh.

3. It is stated that the Petitioner advanced a loan to the tune of Rs.23,00,000/- to the Respondents *vide* a Loan Agreement dated 11.02.2021. Additionally, another loan for a sum of Rs.5,01,253/-, as well as a quick

cash facility loan for a sum of Rs.5,00,000/-, were also advanced by the Petitioner to the Respondents in December, 2021 and February, 2023, respectively.

4. Since the Respondents did not adhere to the repayment schedule, the loan accounts of the Respondents were declared as Non-Performing Assets.

5. It is stated that proceedings under the SARFAESI Act have already been initiated and as per Section 13(4) of SARFAESI Act, symbolic possession of the property in question has been taken by the Petitioner.

6. Notice in the present matter was issued on 25.02.2026. Arguments of the learned Counsels for the parties were heard and the matter was reserved on 17.04.2026. However, while dictating the Judgment, it was felt by this Court that the Judgment passed by the Apex Court in M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., **(2017) 16 SCC 741** on which the Petitioner placed reliance has been differentiated by the Judgment passed by the larger Bench of the Apex Court in Vidya Drolia v. Durga Trading Corpn., **(2021) 2 SCC 1**, relevant portions of the said Judgment reads as under:

> "***56***. *In M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd. [M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., (2017) 16 SCC 741 : (2018) 2 SCC (Civ) 805] , and following this judgment in Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd. [Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd., (2018) 14 SCC 783 : (2018) 4 SCC (Civ) 703] , it has been held that even prior arbitration proceedings are not a bar to proceedings under the NPA Act. The NPA Act sets out an expeditious, procedural methodology enabling the financial institutions to take possession and sell secured properties for non-payment of the dues. Such powers, it is obvious, cannot be*

exercised through the arbitral proceedings.

***57**. In Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] , on the powers of the Debt Recovery Tribunal ("DRT") under the DRT Act, it was observed : (SCC p. 141, para 18)*

> *"18. On analysing the above provisions of the DRT Act, we find that the said Act is a complete code by itself as far as recovery of debt is concerned. It provides for various modes of recovery. It incorporates even the provisions of the Second and Third Schedules to the Income Tax Act, 1961. Therefore, the debt due under the recovery certificate can be recovered in various ways. The remedies mentioned therein are complementary to each other. The DRT Act provides for adjudication. It provides for adjudication of disputes as far as the debt due is concerned. It covers secured as well as unsecured debts. However, it does not rule out the applicability of the provisions of the TP Act, in particular, Sections 69 and 69-A of that Act. Further, in cases where the debt is secured by a pledge of shares or immovable properties, with the passage of time and delay in the DRT proceedings, the value of the pledged assets or mortgaged properties invariably falls. On account of inflation, the value of the assets in the hands of the bank/FI invariably depletes which, in turn, leads to asset-liability mismatch. These contingencies are not taken care of by the DRT Act and, therefore, Parliament had to enact the NPA Act, 2002."*

58. Consistent with the above, observations in Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] on the power of the DRT conferred by the DRT Act and the principle enunciated

in the present judgment, we must overrule the judgment of the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] , which holds that matters covered under the DRT Act are arbitrable. It is necessary to overrule this decision and clarify the legal position as the decision in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] has been referred to in M.D. Frozen Foods Exports (P) Ltd. [M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., (2017) 16 SCC 741 : (2018) 2 SCC (Civ) 805] , but not examined in light of the legal principles relating to non-arbitrability. The decision in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] holds that only actions in rem are non-arbitrable, which as elucidated above is the correct legal position. However, non-arbitrability may arise in case of the implicit prohibition in the statute, conferring and creating special rights to be adjudicated by the courts/public fora, which right including enforcement of order/provisions cannot be enforced and applied in case of arbitration. To hold that the claims of banks and financial institutions covered under the DRT Act are arbitrable would deprive and deny these institutions of the specific rights including the modes of recovery specified in the DRT Act. Therefore, the claims covered by the DRT Act are non-arbitrable as there is a prohibition against waiver of jurisdiction of the DRT by necessary implication. The legislation has overwritten the contractual right to arbitration."

(emphasis supplied)

7. In the opinion of this Court, a question does arise as to whether the present dispute is arbitrable or not especially in light of paragraph No.58 of the Judgment of the Apex Court in Vidya Drolia (supra). However, learned

Counsel appearing for the Respondent states that he has no objections if the matter is referred to an Arbitrator leaving all the issues open for the Arbitrator to take a decision including the right of the Respondent under Section 16 & 17 of the Arbitration and Conciliation Act, 1996.

8. Since it is well-settled that referral courts should normally follow the policy of 'when in doubt, refer' and in view of the fact that disputes have certainly arisen between the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties. Accordingly, Mr. Suresh Dobhal, Advocate (Mob. No: 9810189788) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

9. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

10. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

12. It is made clear that nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

13. It is further made clear that the observations made in this Order are squarely limited to the appointment of an Arbitrator. Needless to say, it is open for the Respondent to urge its contention regarding arbitrability etc. before the Arbitrator.

14. The petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 12, 2026
Rahul